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IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-1025

HENRY COUNTY BEVERAGE CORPORATION,
Petitioner,

v.

SECRETARY OF THE TREASURY,
Respondent.

APPENDIX

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APPENDIX A

U. S. TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE
ALCOHOL, TOBACCO AND FIREARMS
OFFICE OF HEARING EXAMINER
CHICAGO, ILLINOIS

UNITED STATES OF AMERICA Southern Judicial District of Indiana	ALCOHOL, TOBACCO & FIREARMS DIVISION
In the Matter of the Order to Show Cause why Permit Number IND-P-1688 should not be annulled	FAA Docket No. CIN-ATF-2780
Issued to	Central Region
Henry County Beverage Company, Inc. 125 North 26th Street New Castle, Indiana	INTERNAL REVENUE SERVICE

DECISION OF THE HEARING EXAMINER

This matter came before me pursuant to an Order to Show Cause, Government Pleading 1, served on Henry County Beverage Company, Incorporated, 125 North 26th Street, New Castle, Indiana, the respondent herein, by the the Assistant Regional Commissioner, Alcohol, Tobacco and Firearms Division, Internal Revenue Service, Cincinnati, Ohio, on the 14th day of November 1969.

The Assistant Regional Commissioner alleged that respondent had procured Permit No. IND-P-1688, dated January 7, 1969, as a Wholesaler of malt beverages under the Federal Alcohol Administration Act through fraud, misrepresentation, and concealment of material fact, and ordered and cited the said respondent to appear before me at a time and place to be fixed within 30 days of the service of the Order, and

show cause why the permit should not be annulled. In an Order issued under the date of December 10, 1969 a hearing in the matter was set down for the 11th day of February 1970 at Indianapolis, Indiana.

The Assistant Regional Commissioner alleged that the respondent procured Wholesaler's Basic Permit No. IND-P-1688, dated January 7, 1969, through fraud, misrepresentation, and concealment of material fact in that it willfully and knowingly filed an application for Wholesaler's Basic Permit on Form 1632, dated December 5, 1968 and an Addendum thereto dated December 30, 1968, pursuant to which the permit was issued, which were false, and that respondent willfully and knowingly misrepresented and concealed material fact therein as more particularly set out below:

I.

That from on or about November 26, 1958, to the present time, Marshall L. Davis, Sr., the president of Henry County Beverage Company, Incorporated, New Castle, Indiana, has held a substantial interest in and has exercised extensive control over Norris Beverage Distributors, New Castle, Indiana, Wholesaler's Basic Permit No. CIN-P-802.

II.

That Henry County Beverage Company, Incorporated, in Item 15 of the aforesaid application, dated December 5, 1968 and in the Addendum dated December 30, 1968 to said application, deliberately concealed a material fact by failing to list Marshall L. Davis, Sr., an officer, director and holder of more than 10% of the capital stock of Henry County Beverage Company, Incorporated, as having held a financial interest in Norris Beverage Distributors, New Castle, Indiana, Wholesaler's Basic Permit No. CIN-P-802.

III.

That Henry County Beverage Company, Incorporated, in Item 21 of the aforesaid application dated December 5, 1968, and in the Addendum dated

December 30, 1968 to said application deliberately concealed a material fact by failing to list Marshall L. Davis, Sr., an officer, director and holder of more than 10% of the capital stock of Henry County Beverage Company, Incorporated, as holding an interest in Norris Beverage Distributors, New Castle, Indiana, Wholesaler's Basic Permit No. CIN-P-802.

IV:

That had Henry Beverage Company, Incorporated, truthfully revealed that Marshall L. Davis, Sr., held or had ever held a financial interest in Norris Beverage Distributors, the aforesaid application would have been denied in that Alcohol, Tobacco and Firearms Division would then have discovered the true ownership of Norris Beverage Distributors and would have found that the interest held by Marshall L. Davis, Sr. in two wholesale beer permits was contrary to Indiana law which provides that no wholesale beer permit shall be issued to any person holding the interest in any other such permit.

V.

That had Henry County v. Beverage Company, Incorporated, truthfully revealed that Marshall L. Davis, Sr. held or had ever held a financial interest in Norris Beverage Distributors, the aforesaid application would have been denied in that the Alcohol, Tobacco and Firearms Division would then have discovered that Marshall L. Davis, Sr., had violated 27 USC 205(a) by restricting the business activities of Norris Beverage Distributors and had thereby, indirectly and through an affiliate, required by agreement and otherwise that the customers of Henry County Beverage Company, Incorporated, purchase beer from Henry County Beverage Company, Incorporated, to the exclusion in whole or in part of Norris Beverage Distributors.